



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/695,471

10/28/2003

Janaswamy Madhusudana Rao

0640/71348/JPW/AG

5608

7590

04/20/2006

John P. White  
Cooper & Dunham LLP  
1185 Avenue of the Americas  
New York, NY 10036

EXAMINER

FLOOD, MICHELE C

ART UNIT

PAPER NUMBER

1655

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
---------------------------------	-------------	---	---------------------

EXAMINER
----------

ART UNIT	PAPER
----------	-------

0406

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

Acknowledgment is made of the receipt and entry of the amendment filed on February 3, 2006 with the cancellation of Claims 8 and 13-52 and the addition of Claim 53.

The substantial amendment to newly amended Claims 1-6 and newly amended Claims 9-12 and newly submitted Claim 53 directs the claimed invention to an invention that is independent or distinct from the invention originally claimed for the following reasons: For instance, the originally presented invention of Claim 1 was drawn to a synergistic herbal composition for the treatment of gastric ulcer comprising powdered plants of *Asparagus racemosus*, *Glycyrrhiza glabra*, *Sesamum indicum*, *Musa sapientum* and *Trachyspermum roxburghianum* and optionally powdered plant parts of *Cyclea peltata*, *Embelia ribes*, *Coriandum sativum*, *Ferula asafetida*, *Aloe barbadensis* or *Evolvulus alsinoides* along with one or more pharmaceutically acceptable additives/carriers. However, as presently drafted, independent Claim 1 is directed to a composition for the treatment of gastric ulcer comprising powdered plant parts of *Asparagus racemosus*, *Glycyrrhiza glabra*, *Sesamum indicum*, *Musa sapientum* and *Trachyspermum roxburghianum* in equal proportions and one or more pharmaceutically acceptable additives or carrier; Claim 2, as presently drafted, is directed to a composition comprising powdered plant parts of *Asparagus racemosus*, *Glycyrrhiza glabra*, *Sesamum indicum*, *Musa sapientum* and *Trachyspermum roxburghianum* in essentially equal proportions and one or more pharmaceutically acceptable additives or carriers; Claim 3, as presently drafted is directed to a composition comprising each of the claim-designated ingredients of powdered plant parts of *Asparagus racemosus*, *Glycyrrhiza glabra*, *Sesamum indicum*, *Musa sapientum*, *Trachyspermum roxburghianum*, *Evolvulus alsinoides* and *Ferula asafetida* in equal proportions and one or more pharmaceutically acceptable additives or carriers, according to the composition of Claim 53; Claim 4, as presently drafted, is directed to a composition comprising each of the claim-designated ingredients of powdered plant parts of *Asparagus racemosus*, *Glycyrrhiza glabra*, *Sesamum indicum*, *Musa sapientum*, *Trachyspermum roxburghianum*, *Evolvulus alsinoides*, *Ferula asafetida*, *Coriandum sativum*, *Cyclea peltata* and *Aloe barbadensis* in equal proportions and one or more pharmaceutically acceptable additives or carriers; Claim 5, as presently drafted, is directed to a composition comprising each of the claim-designated ingredients of *Asparagus racemosus*, *Glycyrrhiza glabra*, *Sesamum indicum*, *Musa sapientum*, *Trachyspermum roxburghianum*, *Evolvulus alsinoides* and *Ferula asafetida* in claim-designated percentage amounts and one or more pharmaceutically acceptable additives or carriers; Claim 6, as presently drafted, is directed to a composition comprising each of the claim-designated ingredients as recited in newly amended Claim 1, further comprising one or more of each of *Embelia ribes* and *Coriandum sativum*; and Claim 12, as presently drafted, is directed to a composition comprising each of the claim-designated ingredients as recited in newly Claim 1, further requiring the claim-designated ingredient of *Ferula asafetida* resin.

In other words, the difference between the invention of the originally presented invention and the presently claimed invention is that Applicant is now attributing the functional effect of the claimed composition to treat gastric ulcer in terms of an additive effect of the claim-designated plants, instead of a synergistic effect of the claim-designated ingredients. However, claiming a composition in terms

of an additive effect of a combination of ingredients to provide a particular functional activity is significantly different, independent and distinct from claiming a composition in terms of a synergistic effect of a combination of ingredients to exert a certain functional activity because synergism is an unpredictable phenomenon, highly dependent upon specific proportions and/or amounts of particular ingredients which results in an unexpected result. For example, the recitation of the phrase "a synergistic herbal composition" in the preamble of the originally presented claims implied that the functional effect of the claimed invention to treat gastric ulcer was due to the ability of particular amounts or particular proportions of each of the claim-designated ingredients or at least one of the claim designated ingredients in combination with the other ingredients to exert either an effect not present when each of the individual ingredients were present in a composition alone or to effect an unexpected effect, such as greater a greater effect, when the at least one ingredient or combination of each individual ingredient was present in the combination composition in an amount that was less if each of the ingredients were present or the at least one ingredient was present in a composition alone. As Applicant no longer directs the instantly claimed invention to "a synergistic herbal composition to treat gastric ulcer" comprising at least the claim-designated powdered plant parts as originally presented for prosecution on the merits, it may appear that Applicant has switched inventions.

However, since the submission appears to be a bona fide attempt to provide a complete reply to the prior Office action, Applicant is given a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing date of this letter, whichever is longer, to submit a complete reply. This shortened statutory period for reply supersedes the time period set in the prior Office action. This time period may be extended pursuant to 37 CFR 1.136(a).

  
**MICHELE FLOOD**  
**PRIMARY EXAMINER**

Michele Flood  
Primary Examiner  
Art Unit: 1655